

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the operations and practices of Mineral City Water Company and its Owner and Operator, JoAnn Perkins, and Order to Show Cause why findings should not be entered by the Commission under Public Utilities Code Section 855.

Investigation 01-10-003
(Filed October 10, 2001)

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Public Utilities Commission
Dennis Albright, Attorney at Law, for Mineral
City Water Company and JoAnn Perkins.

O P I N I O N**1. Summary**

Mineral City Water Company (Mineral City), a regulated water company serving 172 connections in Tehama County, has stipulated at hearing that it is unable to adequately serve its ratepayers and that this inability has a potential adverse effect on public health. Accordingly, we direct the Commission's Legal Division, in coordination with the California Department of Health Services (DHS), to start proceedings in the Superior Court of Tehama County pursuant to Pub. Util. Code § 855 for appointment of a receiver to take possession of and operate the water system.

2. Background

The history and sequence of events that prompted this proceeding are set forth in a declaration and testimony at hearing by Gunther Sturm, district engineer for the DHS Division of Drinking Water and Environmental Management. For the most part, Sturm's testimony is uncontested.

The utility serves the unincorporated community of Mineral, located along State Highway 36 about 45 miles east of Red Bluff. The utility was first certificated in 1940 by Decision (D.) 33187. In 1985, the Commission authorized the utility's transfer to Mineral City, a California corporation formed by the owners for that purpose. JoAnn Perkins is president of the corporation.

Permitted water sources for Mineral City include two developed springs and a well. Four redwood storage tanks provide system storage. Water mains carry water from the storage tanks to customers.

In the past, the primary source of water for Mineral City was chlorinated surface water from Martin Creek. In 1991, however, the state adopted new regulations requiring an approved filtration method and disinfection of surface water. All public water systems using surface water were required to come into compliance with these regulations by June 29, 1993. Alternatively, they could discontinue use of surface water and provide water from permitted groundwater sources.

Mineral City was first cited by DHS in 1994 for failure to meet surface water filtration and disinfection regulations. The citation imposed a service connection moratorium and directed the company either to cease use of Martin Creek water or construct approved treatment facilities for surface water.

Over the next three years, the company drilled three new wells, but two were unsuccessful and the third had unacceptable levels of iron and manganese.

In 1997, in response to another DHS citation, the utility developed another spring source of water, but use of Martin Creek water continued sporadically to meet system needs. In 1998, DHS assessed two fines totaling \$4,750 for 19 days of unauthorized use of creek water.

For most of the years 1999 and 2000, the water system was able to operate without being supplemented by Martin Creek water. In 2001, however, the utility once again used Martin Creek water and issued a boil-water notice to its customers. DHS cited the company again, this time requiring an engineering report to identify short-term and long-term measures needed to achieve compliance. The engineering report, submitted in May 2001, recommended a number of measures, including construction of a 20-gallon-per-minute filtration plant.

On May 21, 2001, Mineral City notified DHS that it would not invest funds to build the filtration plant, and that no officer of the corporation was willing to guarantee a loan for funds for the work. Mineral City further advised that it would not oppose a proceeding to place the water system into receivership. DHS in June and July 2001 assessed civil penalties for non-compliance totaling \$6,400. In August, a further penalty of \$15,400 was assessed.

3. Evidence at Hearing

After consultation with DHS, this Commission on October 10, 2001, issued its order instituting investigation with an order to Mineral City to show cause why the Commission should not begin proceedings for appointment of a receiver to operate the water system. The order was based on Pub. Util. Code § 855, which states:

Whenever the commission determines, after notice and hearing, that any water or sewer system corporation is unable or

unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission, the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon such terms and conditions as the court shall prescribe. The court may require, as a condition to the appointment of such receiver, that a sufficient bond be given by the receiver and conditioned upon compliance with the orders of the court and the commission, and protection of all property rights involved. The court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state.

Hearing was set for November 16, 2001, in Redding, but it was postponed at the unopposed request of respondents until December 5, 2001.

At hearing, counsel for Mineral City and JoAnn Perkins stated that Perkins in the year 2000 had to repay part of a \$75,000 loan on behalf of the company and, since that time, has made loans of \$21,000 and \$56,000 to the company for drilling and engineering work. He stated that a sale of the company to Del Oro Water Company, Inc., authorized by this Commission in D.00-04-024 in April 2000, had fallen through because of questions about water rights. He stated that neither Perkins nor any other shareholder of Mineral City was willing to pay for a new treatment plant or guarantee a loan for such construction.

Counsel stated that Mineral City and Perkins do not oppose a proceeding to place the water system in receivership. He also stipulated that this Commission may find that Mineral City (1) is unable to adequately serve its ratepayers, and (2) this inability to serve creates a potential public health risk.

Perkins testified briefly, confirming the representations of her counsel. She also testified that she had directed use of Martin Creek water on two occasions

during the past year, both times to prevent the water lines from freezing when water levels had dropped precipitously because of leaks.

DHS witness Sturm recounted the history of DHS dealings with Mineral City since 1993, when his department assumed jurisdiction for regulating the health and safety of the water system. (Prior to that time, the Tehama County Division of Environmental Health had regulated health and safety of the water system.) Sturm testified that, in his judgment, Mineral City has consistently failed to comply with filtration and disinfection regulations, thus endangering public health and safety.

4. Discussion

The adequacy, purity and safety of Mineral City's water supply has been a matter of concern to the DHS since 1991, when the State adopted new surface water filtration and disinfection treatment regulations. It is uncontroverted that customers have been placed at risk at various times in the past decade when the utility used Martin Creek water that had not been properly treated in accordance with the regulations. DHS testimony shows that on at least one occasion, creek water was placed in the system prior to the time that customers were alerted to boil the water before drinking it.

At the same time, it is clear that Mineral City has made efforts to find substitute sources of water that are in compliance with DHS regulations. DHS acknowledges that for all of 1999 and for most of 2000, the water system was operated without incident, using water from two springs and a well without the use of water from Martin Creek. Indeed, on April 6, 2000, in approving the sale of the water system to Del Oro, the Commission commented:

In Mineral City's most recent rate resolution [W-4136, February 18, 1999], the Commission noted both the Department

of Health Services' and Water Advisory Branch's belief that Mineral City acted prudently, in good faith and in the best interests of its ratepayers to comply with new surface water treatment regulations. The Commission concluded that service was satisfactory, there were no Commission orders requiring system improvements, and no service problems requiring corrective action. (D.00-04-024, slip op. at 3.)

Nevertheless, Mineral City has stipulated that it lacks the funds to construct a filtration system to meet state water requirements and that its use of inadequately treated Martin Creek water presents a health risk to customers. Mineral City stipulates that this issue needs to be addressed immediately because of the potential health risk. The utility has further stated that it does not oppose a Superior Court petition for appointment of a receiver, and that it will cooperate with the Commission and DHS in pursuing receivership.

Accordingly, pursuant to Pub. Util. Code § 855, our order today directs the Commission's Legal Division, in coordination with the DHS, to immediately start proceedings in the Superior Court of Tehama County for appointment of a receiver to take possession of and operate the Mineral City water system.

5. Waiver of 30-Day Waiting Period (Pub. Util. Code § 311(d) and of Comment Period

In its order instituting investigation, the Commission categorized this as a ratesetting proceeding and set hearing solely on the order to show cause. No objection to this categorization has been filed. At the request of the Legal Division, we have processed this proceeding as an emergency matter in order to protect Mineral City's ratepayers.

While normally the Commission can act no sooner than 30 days following the filing and service of a proposed decision pursuant to Pub. Util. Code § 311(d), this 30-day waiting period may be reduced or waived upon stipulation of all

parties. In this instance, all parties have waived the 30-day period and the related comment period allowed by Rule 77.2 et seq., so that the Commission can consider this decision as quickly as possible.

Findings of Fact

1. Mineral City is a regulated water utility serving 172 connections in the unincorporated community of Mineral in Tehama County.
2. Before 1991, the primary source of water for Mineral City was chlorinated surface water from Martin Creek.
3. New State regulations effective June 29, 1993, required an approved filtration method and disinfection of surface water.
4. Mineral City sought to comply with state water regulations by using well and spring water in place of Martin Creek water, but use of Martin Creek water continued sporadically.
5. Since 1994, the DHS has issued 11 citations against Martin Creek for failure to comply with surface water regulations and other infractions.
6. On May 21, 2001, Mineral City notified DHS that the utility would not invest funds to build a filtration plant and that no officer of the corporation was willing to guarantee a loan for funds for the work.
7. Mineral City used Martin Creek water in its system on at least two occasions within the past year.
8. Mineral City has stipulated that it is unable to adequately serve its ratepayers in complying with state surface water regulations.
9. Mineral City has stipulated that its inability to adequately serve its ratepayers has a potential adverse effect on public health.
10. Mineral City has stipulated that immediate action is necessary because of the potential risk to the public health.

11. Due to the public health concerns, today's order should be made effective immediately.

Conclusions of Law

1. Mineral City is unable to adequately serve its ratepayers.
2. Mineral City's inability to adequately serve its ratepayers has a potential adverse effect on public health.
3. Pub. Util. Code § 855 provides that the Commission may petition the Superior Court for appointment of a receiver to operate a water system when the Commission determines, after notice and hearing, that the water system corporation is unable or unwilling to adequately serve its ratepayers.
4. The Commission's Legal Division should be directed to file immediately with the Superior Court of Tehama County a petition for appointment of a receiver to take possession of and operate the Mineral City water system.

O R D E R

IT IS ORDERED that:

1. The Commission's Legal Division shall file immediately with the Superior Court of Tehama County a petition for appointment of a receiver to assume possession of and operate the water system of the Mineral City Water Company.
2. Investigation 01-10-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.